

HIOSH ADVISORY COMMITTEE MINUTES

Thursday, June 21, 2007
HIOSH Training Room 427
1:00 – 2:20 p.m.

Present: Richard Botti, Legislative Information Service of Hawaii
Reynard Burgess, Parsons
Paul Chang, Hawaii Carpenters Union, Local 745
Delbert DeRego, ILWU Local 142, Maui Division
Joaquin Diaz, Dick Pacific Construction Co., Ltd.
Tracy Hayashi, Hawaii Electricians Training Fund
Clifford Higa, Safety Systems Hawaii
Alan Hiramatsu for Thomas Vendetta, City & County of Honolulu,
ISWC/Human Resources
Dr. Charles Kelley, Outrigger Hotels
Paul King, Actus Lend Lease, LLC
Robert Nakamatsu, State Department of Human Resources Development
James Newberry, American Society of Safety Engineers
Joseph O'Donnell, Ironworkers, Local 625
Mike Redman, Hawaii Employers Mutual Insurance Company
Clifford Uwayne, United Public Workers
Daniel Vasilash, General Contractors Association of Hawaii
Clayton Winger, Monarch Insurance Service

Absent: David Aki, Hawaii Teamsters, Local 996
Ernest Balatinez, Balatinez & Associates Safety Consultants
Lani Bjork, Hilton Hawaiian Village Hotel
Patrick Cheng, Airgas Gaspro
Thomas Goob, American Industrial Hygiene Association
Clayton Kamida, Hawaii Employers Council
Janelle Kanuha-Marshall, Marine Corps. Community Service
Timothy Lyons, Hawaii Business League
Gareth Sakakida, Hawaii Transportation Association
Richard Vieira, Hawaii Painter's Union
Shelley Wheeling Park, Kaiser Permanente of Hawaii
James Zane, McCabe, Hamilton & Renny Co., Ltd.

HIOSH: Nelson Befitel, Director's Office, Dept. of Labor & Industrial Relations
Ellen Kondo, Consultation & Training Branch, HIOSH
Deirdre Yamasaki, HIOSH (Recorder)

The meeting was called to order at 1:00 p.m. by Chairperson Dr. Charles Kelley. A quorum was present.

1. Member introductions and roll call.

2. Information from HIOSH to the HIOSH Advisory Committee

Legislative Changes or Rule Changes in 2007

Director Nelson Befitel reported a bill was passed to allow employers to drug test their employees on-site using any type of method. The saliva test method is probably the most common method. The saliva test method is cost effective compared to the old method of having employees go to the lab, get tested, and then come back to the jobsite. The bill includes some safeguard provisions to ensure that employees are protected. If the saliva test is positive, the employee is still required to go to the lab. This assures accuracy and that the employee is not disciplined due to an on-site drug test. This bill reduces costs for employers and will increase the safety of construction sites. Director Befitel thanked the Hawaii Carpenters Union and their contractors for advocating and taking the lead on this bill.

Teen Safety Campaign

The Teen Safety Campaign was launched earlier this week. It is a national campaign. OSHA has made it a priority to build a culture of safety within our teens and our young workforce. HIOSH has taken part by launching its own teen safety campaign, especially during this time when a lot of teens are entering the workforce. There are two phases to the campaign. The first phase is an awareness of the campaign by running commercials on television, radio, and at the theatres. The second phase is to get the teenagers actually involved by having them enter a contest. The teenagers will give a proposal and the department will select five schools. The five schools selected will win equipment to produce teen videos for their peers. HIOSH would like to get teens involved in learning about safety, talk to their peers about safety, and build that culture of safety at a very young age.

HIOSH Activities and Status Report

HIOSH currently has 37 SHARP companies and will probably get four (Kiewit Building Group, Armstrong Builders, Centex Homes, and Simmons Bedding Company) more in the next couple of weeks. OSHA's expectation goal is to get eight more companies. HIOSH will probably get eight by the end of the month.

HIOSH has added another VPP company. The company is called Covanta Honolulu Resource Recovery Venture. There are five VPP companies all together. HIOSH's goal is to get three more companies by the end of this federal fiscal year.

For consultation visits, HIOSH's goal is to complete 288 consultation visits. Currently, HIOSH has completed 170 consultation visits or 60%. Since there are five months left, consultation numbers are on track.

For safety inspections, HIOSH's goal is to complete 765 inspections. Currently, HIOSH has completed 444 inspections or 60%.

For health inspections, HIOSH's goal is to complete 185 inspections. Currently, HIOSH has completed 80 inspections or 45%.

For the Director's position, there have been ads in the paper. Several resumes were received and hopefully someone will be selected. If anyone or their colleagues are interested, a resume and a cover letter can be submitted to Mr. Bob Awana, Chief of Staff. Dr. Kelley asked if they are looking for in-state or out-of-state people. Director Befitel informed out-of-state people will not be excluded, but it may be a disadvantage.

Director Befitel was asked to report on the number of fatalities in the State. Director Befitel reported there was one recently in Kahuku. For the fatality where the gentleman fell from the 42nd floor, HIOSH has completed the initial investigation. Currently, the Attorney General's Office is reviewing the case. Director Befitel was unable to give details since it is still under investigation.

Director Befitel was asked to report on vacancies. Director Befitel reported HIOSH still has open recruitment and is not getting applicants. Shortage differential was one of the areas that was being looked at but it probably will not go to a level to match what is being paid in the private sector. HIOSH is looking into having a scholarship program that pays for tuition to participate in safety courses and classes. The participant would need to meet minimum qualifications to serve as an entry level safety or health officer. This would take care of the entry level vacancies but there would still be the vacancies for the managerial and supervisor positions. People from the private sector would be reluctant to take a pay cut.

Director Befitel was asked if there were any bills the committee should be aware of that did not get passed and may come up again next year. Director Befitel reported there were none relating to HIOSH or safety.

3. Joint Projects Between HIOSH and the HIOSH Advisory Committee

Safety Recognition and Awards Committee – Clayton Winger

Mr. Winger reported the committee is currently in the process of recruiting nominations for companies. Self nomination is accepted. Nomination forms were handed out. The nomination form explains the process and what the committee is looking for. In October, the committee will send out the application form which includes information on what the committee would like to see submitted. The committee is looking for not only injury statistics but how the program functions and what they are doing that they feel is significant in the areas of safety that has gotten them to the point of excellence. In December, the committee will do the evaluations. The 2008 Governor's Pacific Rim Conference will be held on May 19-21, 2008, at the Convention Center.

Drugs in the Workplace – Dr. Charles Kelley

At the HIOSH Advisory Committee's February 15, 2007 meeting, Mr. Carl Linden of Diagnostic Laboratory Services did a presentation on drug testing in the workplace and his concerns on oral drug testing. Now that the bill has passed, Dr. Kelley asked Mr. Linden if he had any concerns. Mr. Linden replied overall the bill will be helpful for screening. Mr. Linden had two concerns. One concern was if the testing will be done out in the workplace, construction workplaces can be hot, cold, wet and dry. The quality of the testing kits may become degraded from the environment or be used improperly. False positives or

false negatives might exclude someone unnecessarily. The other concern was companies using the on-site drug testing as a quick screening test may not send the employee in for further confirmation testing with the regular urinal or blood testing.

Mr. Joaquin Diaz informed that his company uses oral drug testing in the mainland. The employee goes to the office and swabs their mouth themselves. The test is read. If there is an issue with the sample, it is kept in the chain of custody. It is sent to the lab; the worker goes to the lab and takes a urinalysis. Then, the results of the swab and urinalysis are matched. In California, there is a 24-hour turnaround for negatives and two- to three-day turnaround for positives.

Mr. Dan Vasilash informed that he was dissatisfied with the kits he purchased. The tests were time consuming and the results were inconclusive. Mr. Vasilash tried using two sets of tests per person, but the results were still inconclusive. Since the tests were run in the office, it would have been worse in the field. Since the test left room for interpretation, Mr. Vasilash discontinued them. Mr. Diaz added the reason could be where the product is from and how the product is stored.

Mr. Clifford Uwayne informed that effective July 1, 2007, all United Public Worker (UPW) members will be drug tested. About ten years ago, the UPW started drug testing Commercial Driver's License (CDL) members and correctional officers. Then, about two years ago, they negotiated to have medical staff drug tested. Currently, they just completed negotiations to have the last segment of non-CDL members drug tested. The UPW is working with Mr. Robert Nakamatsu. There have been meetings with their members throughout the State. Positive feedback has been received. The UPW did not receive any negative reactions. The drug testing will be on a random and reasonable suspicion basis.

Training Outreach Committee

No one was available to give an update.

Public Sector Need for Safety Assistance – Clayton Winger

At the last meeting, Mr. Winger mentioned two items. One item was although statistics and accident records show the public and private sector are about equal, Mr. Clayton Winger would suspect public work type activities probably have a higher incident rate than the clerical office type activities. Mr. Winger will research that type of information.

The second item was Mr. Winger suggested coordinating safety efforts among the members of the HIOSH Advisory Committee. In case of a catastrophe, Mr. Winger would like better coordination between the HIOSH Advisory Committee members, the fire department, police department and the harbors. Because different parties are in charge for some safety issues, safety efforts do not necessarily get addressed probably as well as it could. Mr. Winger would like to add to the HIOSH Advisory Committee's bylaws various types of activities. Mr. Winger would like to have the HIOSH Advisory Committee members on the same page and inform the fire department that the HIOSH Advisory Committee has safety experts in areas other than within the fire department, police department or whatever agency is in

charge of that point. If anyone has any contributions or would like to do something along those lines, please let Mr. Winger know.

Mr. Newberry informed that on a national level, the American Society of Safety Engineers (ASSE) and the Chemical Safety Board spoke to the House of Representatives on workforce protection. They discussed the public workers and the lack of protection. There are a fair number of cities, counties, and state workers that are not covered by OSHA. Posted on the Internet were chemical safety board photos of catastrophes that were investigated. Mr. Newberry posted on the main page of ASSE's website links to the testimony and the chemical safety board videos.

4. Information From HIOSH Advisory Committee to HIOSH

Discussion on the Multi-employer Worksite Doctrine

Dr. Kelley has received emails about a multi-employer worksite doctrine. Dr. Kelley asked if anyone could briefly explain what it is.

Mr. Diaz stated there are four categories of employers on a jobsite. There is a controlling employer, a creating employer, an exposing employer and a correcting employer. By contract, the controlling employer is usually what would be considered the prime or general contractor of the site. In certain cases, it could also be the owner, if there is a direct contractual relationship with the contractors.

Mr. Diaz gave an example of how the multi-employer worksite doctrine works. ABC Contractor hires Atlas Sales to come and build a scaffold. Part of their agreement is that Atlas Sales would build, inspect and maintain the scaffold for the jobsite. Then, the painting contractor and the carpenters apply finish to the walls and take the guardrails off of the scaffold. They walk away. Then, the window contractor works on the scaffold with the guardrails down. If HIOSH is on the jobsite, they can cite every contractor involved with that single activity. They can cite ABC contractor as the controlling company. They can cite Atlas Sales as the correcting company because they did not correct the guardrails and put them back. They can cite the carpenters for creating that hazard and not correcting it. They can cite the window contractor for being exposed to the hazard. There are multiple layers of citations and the prime or general contractor can also receive some of the citations.

Mr. Newberry informed the group that in the OSHRC issued a split opinion that may invalidate the multi-employer worksite doctrine. This issue came down to the language in the statute that is cited for multi-employer worksite doctrine [1910.12(a)]... "Each employer shall protect the employment and places of employment of each of his employees engaged in construction work by complying with the appropriate standards prescribed in this paragraph." and is grounded in OSHA Instruction sheet - CPL2-0.124, indicating to compliance officers in the field, to issue citations to "controlling employers". Mr. Newberry suggests that while the verdict is still out, responsible GC's best bet is to take the higher road and continue to enforce safety with their subcontractors.

Mr. Befitel informed that HIOSH is working with federal OSHA. HIOSH will not change its practice until the local board or courts say that law should be applied or unless there is a policy change at the OSHA level. General contractors will still be held responsible.

Fourth Annual IH Review Course

Mr. Newberry informed on August 13-17, 2007, the American Industrial Hygiene Association will be sponsoring a comprehensive industrial hygiene review course. Dr. Levine, an outstanding world reknown trainer from Michigan, will be the course instructor. This course prepares you to take the Certified Industrial Hygienists examination. Mr. Newberry handed out brochures. Applications and information are available at www.aihahawaii.org. Mr. Newberry asked Director Befitel if anyone in HIOSH was interested in attending or if HIOSH could give any support to anyone who might need to take the review course. Director Befitel asked Mr. Newberry to forward the information to him. Director Befitel will discuss with Mr. Newberry after reviewing the information.

Around-the-Table Comments

Mr. Newberry informed that he is on the OSHA Training Institute Advisory Committee. Mr. Joaquin Diaz and Ms. Tracy Lawson completed a class on fall arrest earlier this week. Mr. Newberry had materials available for all OSHA Training Institute courses for the next ten months.

Mr. Joe O'Donnell filed a complaint against a contractor. He was disappointed that HIOSH eliminated the use of a standard complaint form. He was required to write a letter. On April 3, 2007, Mr. O'Donnell submitted a letter with pictures. Mr. O'Donnell has not received a response. Director Befitel thanked Mr. O'Donnell for bringing this to his attention. Director Befitel will follow up on why the standard complaint form was eliminated and what has been conducted concerning the complaint.

Mr. Alan Hiramatsu asked if there is a person you can call to make a complaint. Director Befitel responded HIOSH has a complaint line. Mr. O'Donnell informed that HIOSH will not do anything until they receive a formal letter. Director Befitel informed that the complaint could be by form in writing and it should not be difficult for people to file a complaint. Mr. O'Donnell responded that not only do they make it hard, but they make it frustrating. Dr. Kelley asked if a complaint could be filed by email. Mr. O'Donnell responded yes, that would be the same as a letter. Director Befitel encouraged members to give him a call if they are not satisfied.

Mr. Reynard Burgess informed that attorneys for people who get seriously injured on the jobsite are now suing people who are responsible for providing the safety. Mr. Burgess suggested that the HIOSH Advisory Committee members cover their bases on the jobsite through training documentation and making sure individuals are working safely. Mr. Newberry informed the group that under Workers' Compensation the employee can not normally sue their employer. This however does not preclude family members suing the employer or the employee and or family from suing other contractors in a multi-employer work setting.

Mr. Dan Vasilash informed that he has been in construction in Hawaii since 1974. Mr. Vasilash notices that a lot of young people working in the field are getting a white hat with a minimum amount of training. They did not come up through the ranks, learn by experience or have a mentor for a period of years before they reached a certain level. Mr. Vasilash asked if HIOSH would be able to provide grant funding for basic training from the OSHA Training Institute. The OSHA Training Institute is the best in the country. For a lot of individuals, it is very cost prohibitive and time consuming over a four-day period. Half-day workshops could get people involved and make them aware of how it impacts their family. Director Befitel responded that HIOSH would be able to help as long as Mr. Vasilash can show there is a need and how we can make it happen. Director Befitel requested Mr. Vasilash provide an agenda, when the training will be held, the number of people that he will guarantee be there, and how Mr. Vasilash is going to get them to attend.

Mr. Vasilash invited HIOSH to attend the General Contractors Association's Safety Committee meetings. The meetings are held on the third Wednesday of every month at 8:30 a.m. at the Pearl Country Club.

Mr. Chang informed that if the Hawaii Carpenter's Union's signatories need any type of training, the union will hold the training here. The Hawaii Carpenter's Union has a training facility in Las Vegas for their signatory contractors to be qualified instructors for scaffold or forklift training. Although the Hawaii Carpenter's Union provides the airfare, training, lodging and meals, small companies have a hard time allowing members to be gone for a week. If workshops were held after work hours, it is unsure what kind of response will be received. Mr. Chang stated that if there is not any benefit for the people being trained, some other kind of incentive would have to be found. The Hawaii Carpenters Union has all kinds of training available for union members and signatory carpenters. Mr. Chang told Mr. Vasilash to contact him.

Mr. Burgess informed that Parsons has a mentor program. Staff that attend their Saturday classes get a raise in pay and they will be next in line to become a foreman or a supervisor. Mr. Burgess notices worksites being filled with young kids also. He can understand why Mr. Vasilash is requesting training.

Mr. Diaz informed that the Building Industry Association is putting together a National Commission for the Certification of Crane Operators training. This type of training is a 40-hour instructional class. Then, the instructors will go out to your facility and use your crane, if you want. They will certify the operator at the site versus sending them to a facility to get certified. When the training gets off the ground, Mr. Diaz asked if HIOSH could provide some type of sponsorship, not so much monetary sponsorship, because HIOSH still has crane operators that lack the experience and ability to operate cranes properly. Director Befitel informed Mr. Diaz that he would like to discuss this. Mr. Newberry stated that if the crane standard was enforced, it would be a good way of getting supporters to endorse getting crane operators certified. Mr. Diaz stated that a lot of companies think they do not have to license their operators, but from a liability standpoint, operators should have a license.

Mr. Diaz's company proposed to the General Contractors Association (GCA) to look into the flu pandemic potential. Because we live on an island, an outbreak could have a great effect. Mr. Diaz's company has put a plan together to address this and has talked about some

succession plans if their general manager passes away. Mr. Diaz suggested that since the HIOSH Advisory Committee has a wide variety of groups, the HIOSH Advisory Committee should put out a training aid or something employers and labor organizations can use as a training tool. Dr. Kelley responded that there are a lot of resources that come through town from the federal level that have a number of training sessions that are actually very good in getting information out. Rather than duplicating, Dr. Kelley suggested getting the word out to the committee about when these opportunities become available. Mr. Diaz stated that the Department of Health (DOH) did a presentation for the GCA. The DOH has had good information in the past. Dr. Kelley stated that the Centers for Disease Control website has great information. Mr. King informed that the Department of Defense is another source. Mr. Diaz stated that the private industry and union members need to cooperate and come up with a plan of attack if we are affected. Dr. Kelley stated that the first thing that needs to be done is really understanding what the potential impact would be. Mr. Newberry stated that succession planning is a very time consuming process for organizations. Dr. Kelley asked the committee if they are aware and have addressed this issue within their organizations to see if it is worthwhile to bring in a resource to conduct a presentation. A lot of members nodded their heads but no comments. Dr. Kelley told Mr. Diaz that he would like to discuss with him how they can make that information available to the committee. Mr. Winger suggested making a listing of resources to start off. Dr. Kelley agreed.

Mr. King commented that a couple meetings ago, the HIOSH Advisory Committee informed Director Befitel that they would like more training videos like the fall protection and safety orientation. Mr. King informed that because those videos were done locally with their peers, it is probably the best tool they have. Director Befitel stated that he would like to do more if members let him know where there is a need. If the videos are put on HIOSH's website, they are relatively less expensive. Mr. King informed that his organization brought up HIOSH's website in their 30-hour course to show the various videos that can be used.

Mr. Winger asked what the status was of the hoisting machine enforcement. Director Befitel informed that it is in the process of getting approval from the Governor's Office, publishing the notice and having a hearing. HIOSH proposed to have enforcement authority. Mr. Vasilash asked how it related to elevator inspectors. Director Befitel responded that elevators are a different arena. There is a law that authorizes HIOSH to close down an elevator. There is a requirement that you need to be certified to operate a crane, but it does not say what the consequences would be.

Mr. Winger informed that he attended a presentation on things that go boom. Mr. Vasilash informed that Senator Akaka had released funding for unexploded ordnance training. The General Contractors Association of Hawaii sent out invitations through the Big Island Contractors Association only. Mr. Vasilash and Mr. Diaz attended the two-day training session in Kona. All the way up to 1946, the Marine's Fifth Division was bombing and blowing up everything on 140,000 acres in the Waikoloa area. After two years of having jobs in the Waikoloa area, the majority of those that attended the training were informed of this information for the first time. The American Society of Safety Engineers asked Mr. Vasilash if he could speak on this so Mr. Vasilash put together an overview of awareness and recognition training. Mr. Vasilash informed the people facilitating the training that most contractors are based on Oahu and send their crews out. The people who held the training are trying to put together a condensed one-day session on Oahu, but Mr. Vasilash informed them

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that three days in Kona would be a better idea. Mr. Botti informed that he lives in Waikoloa and that he was informed not to dig more than 18 inches in his yard. Mr. Winger asked how many sites are there in Hawaii. Mr. Vasilash informed that if you google UXO on the Internet, there are pages. Mr. Newberry informed that Waikoloa was the main concentration of all the practicing going on. Mr. King stated that during his organization's construction process at Schofield, they had to stop and scan the entire area to make sure it was safe. Mr. King informed members that they should have their people trained and have a policy and procedures in place to recognize, run, and report.

Mr. O'Donnell commented that he found the around the table discussions to be very educational. He would like more of this type of discussion.

5. Approval of February 15, 2007 Minutes

The February 15, 2007 minutes were distributed but not passed. Dr. Kelley would like members to have time to review.

The meeting adjourned at 2:20 p.m. Next meeting is scheduled for August 16, 2007 at 1:00 p.m. in the HIOSH Training Room (830 Punchbowl Street, Room 427)